tions of objections to the bankrupt's discharge. By the Act of the 26th of February 1853, it is provided that "in lieu of the compensation now allowed by law to attorneys, solicitors, and proctors in the United States Court," the following and no other compensation shall be taxed and allowed: In a trial before a jury in civil and criminal causes, or before a referee, or on a final hearing in equity or admiralty, a docket fee of $20. In cases at law, where a judgment is entered without a jury, $10, and $5 where a cause is discontinued. These are all in cases of adversary proceedings, and the distinction is drawn between a "trial" and a judgment without a trial. The word "trial" here, as illustrated by Mr. Justice STORY, in 4 Mason 235, means a trial by jury. The pleadings may be filed, the issue made up, but until the jury is sworn there is no trial. In the case before us there was an issue, the jury were sworn, there was a trial, and a verdict against the creditors. Besides, General Orders in Bankruptcy 31, "costs in contested adjudications," provides that "in cases of involuntary bankruptcy, where the debtor resists an adjudication, and the court, after hearing, shall adjudge the debtor a bankrupt, the petitioning creditor shall recover, to be paid out of the fund, the same costs that are allowed by law to a party recovering in a suit in equity; and in case the petition is dismissed (as in this case), the debtor may recover like costs from the petitioner."

The second exception is, therefore, also overruled, and the clerk is directed to tax a docket fee of $20 to the attorney for the respondents.

United States District Court, District of Wisconsin.

THE UNITED STATES *v.* SIX FERMENTING TUBS—HODSON, CLAIMANT.[1]

A claimant may take advantage of the limitation of section 68 of the Internal Revenue Act of 1864, under an answer of general denial.

The Act of 1866, repealing the 68th section of the Internal Revenue Act, continues the section as to offences against the Revenue Laws committed before the repeal.

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[1] We are indebted for this case to the courtesy of Judge Miller.—EDS. AM. LAW. REG.

THIS was an information against the apparatus of claimant used in the distillation of spirits. Among other breaches of the Internal Revenue Law it was charged that, between the 3d day of September 1864 and the 1st day of March 1866, claimant sold and removed from his distillery for consumption and use, 50,000 gallons of spirits by him manufactured and distilled, without first paying the duties required by law, and without having the spirits gauged and inspected, or the casks branded. To the information, claimant answered, "that the said several articles and property seized did not, nor did any part thereof become forfeited in the manner and form in the said information in that behalf alleged.

After all evidence in support of, and in answer to, the alleged forfeiture had been put in, claimant's counsel offered proof, that the facts substantially as here proven in support of the information had come to the knowledge of the collector and deputy collector of the district in the month of September 1866, and a seizure of the same property in the distillery had been then made, and not prosecuted. The proof was offered for the purpose of taking advantage of the limitation prescribed in section 68 of the Act of June 2d 1864 (13 Statutes at Large 248), authorizing seizures, provided "That such seizures be made within thirty days after the cause for the same shall have come to the knowledge of the collector, or deputy collector, and that proceedings to enforce said forfeiture shall have been commenced by such collector within twenty days after the seizure thereof." The evidence was objected to on the part of the prosecution as not responsive to the information and not evidence under the answer. The objection was overruled and evidence admitted.

The evidence showed an investigation of the affairs of Hodson, the claimant, by the collector of his district, and a seizure of the distillery in September 1866; a subsequent abandonment of that seizure; a further investigation by the collector, and a second seizure made in September 1867, upon which the present information was filed within the twenty days allowed by law.

The jury found for the United States, whereupon the claimant moved to set aside the verdict against him, upon the ground that it is against the law and the evidence.

MILLER, J.—The inquiry is in regard to the knowledge of the

collector and deputy collector of the cause for seizure more than thirty days before this seizure was made.

Knowledge of the cause for seizure means knowledge on the part of the officer of facts tending to establish a cause for seizure prescribed in the statute. Mere vague rumor or suspicion, or loose assertions of irresponsible persons are not sufficient. It must consist of or be founded upon such facts communicated to or ascertained by the officer from reliable sources, as *primâ facie* to establish a fraud upon the law.

The facts relied on in support of this information, and substantially upon which the verdict was rendered, were known to the collector and deputy collector and to inspector Burpee, who is the informer, in the fall of the year 1866, a year before this seizure was made.

The evidence upon the subject of the statute limitation was submitted to the jury, together with all the evidence in the cause, with instructions upon the law of the case. The jury were charged that claimant can take advantage of the Statute of Limitation; and that the law requires prompt action on the part of revenue officers.

After much reflection I should not feel justified in disturbing the verdict upon the merits. Finding the verdict upon the evidence, mostly circumstantial, was no abuse of the prerogative of the jury. The evidence was sufficient to bring the mind to the conclusion, that the alleged cause of forfeiture was well founded. The impeached witnesses were sufficiently sustained and corroborated to authorize the jury in finding the verdict in part on their testimony. The means taken by claimant to procure counter affidavits from those witnesses no doubt prejudiced his case with the jury.

I will confine this investigation to the subject of limitation allowed to be raised at the trial upon the pleadings. The answer is in the nature of a plea of the general issue. It is a general denial of the facts alleged in the information. In cases of seizure this mode of pleading is allowable: Conkling's Treatise 590. Special pleadings in actions for penalties and forfeitures, or in criminal prosecutions, are almost entirely disused. A demurrer to an indictment is occasionally interposed. The general practice is either a motion to quash, or a motion in arrest, after a verdict of guilty. In criminal prosecutions, although a defendant may

plead to the jurisdiction of the court, there are but few instances in which he is obliged to have recourse to such a plea. He may take advantage of the matter under the general issue: Archbold Crim. Pl. 80.

In a case under the statute of 31 Elizabeth, which provides that all actions for any forfeiture upon any penal statute, shall be brought within two years, the court held that the defendant may take advantage of the statute on the general issue, and need not plead it: Buller's Nisi Prius 195. In *Johnson* v. *United States*, 3 McLean 89, the court did not permit the party indicted to take advantage upon *habeas corpus*, of the limitation of indictments, where the objection had not been made of record by plea. In *United States* v. *Ballard*, 3 Id. 469, the question of limitation was raised upon the date mentioned in the indictment, upon which the alleged perjury had been committed, and the act was held to bar the prosecution. In *United States* v. *Mayo*, 1 Gall. Rep. 396, there was a plea of the Statute of Limitation. But in *Parsons* v. *Hunter*, 2 Sumner 419–425, the same court declares in the opinion, that in suits on penal statutes, the Statute of Limitation need not be pleaded; but may be taken advantage of under the general issue.

By the 32d section of the Crimes Act of Congress (Statutes at Large 119) it is enacted, "That no person shall be prosecuted, tried or punished for treason or other capital offence, wilful murder and forgery excepted, unless the indictment for the same shall be found by a grand jury within three years next after the treason or capital offence shall be committed; nor shall any person be prosecuted, tried or punished for any offence not capital unless the indictment for the same shall be found within two years from the time of committing the offence. Provided, that nothing therein contained shall extend to any person or persons fleeing from justice." By Acts of Congress, the period of limitation for the prosecution of any crime arising under the Revenue Law, and suits for fines and forfeitures, is five years.

Cases arising under the act limiting prosecutions have been presented to the consideration of courts under different forms of pleading. In *United States* v. *Slocum*, 1 Cranch C. C. Rep. 485, the limitation was specially pleaded. In *United States* v. *Porter*, 2 Id. 60, the limitation was not pleaded. In *United States* v. *Wilson*, 3 Id. 441, the question was raised by demur-

rer. In *United States* v. *White*, 5 Id. 73, it is decided that limitation may be given in evidence by the defendant under the general issue in a criminal cause, and the United States may give in evidence the fact that defendant fled from justice, and therefore was not entitled to the benefit of the limitation. In the opinion, on page 82, the court remarks: "The court is bound to take notice that the defendant, upon the plea of not guilty, had a right to avail himself of the limitation of time, if he was entitled to it; and that the United States had a right to show that he was not entitled to its benefits." "If, from accident or ignorance of his rights, the defendant should have been prevented from asserting or using his right, it might be ground of a motion for a new trial." In the case of *Lee* v. *Clark*, 2 East 333, 336, an action of debt for a penalty given by the game laws, upon the plea of *nil debet*, the verdict was for the plaintiff. Lord ELLENBOROUGH, during the argument, said: "That notwithstanding the allegation that the offence was committed within six calendar months, yet if it were not computed within the time prescribed by the statute, the plaintiff must have been nonsuited." LAWRENCE, J., remarked: "The time having elapsed would have been evidence for the defendant on the plea of *nil debet*." See also 1 Chitty's Crim. Law 471, 475, 626; Espinasse on Penal Statutes 78.

The statute limitation seems to require that evidence of the time the officer obtained knowledge of the cause of forfeiture should be received under the general issue. It is an appropriate inquiry upon the trial of the cause. Proof on the subject might involve a more extended range than if the seizure were prohibited after or between certain dates. Seizure is an open and notorious act on the part of the officer, known to the party in possession; but on what day or time the cause of seizure came to the knowledge of the officer may have to be ascertained from proof of several facts.

From this examination of the subject, I am satisfied that the evidence was properly admitted, and that the verdict, under the instructions of the court upon this subject, should have been for claimant.

A question arises, What effect the repeal of section 68 has on this case, if any? The information charges the offences against the act to have been committed between the 3d day of September

1864 and the 1st day of March 1866. And the seizure is alleged to have been made on the 11th day of October 1867, under and in pursuance of the Act of June 30th 1864 and the acts amendatory thereof and supplementary thereto.

It is an established rule, that where an action for the recovery of a penalty, or a proceeding to enforce a forfeiture prescribed in a legislative act, is pending at the time of the repeal of the act, or instituted after the repeal, such repeal is a bar to the action or proceeding, in the absence of a saving clause in the repealing act.

A clause of the repealing act provides that the repeal shall take effect on the 1st day of September 1866. The Act of March 3d 1865 (13 Statutes at Large 472) continues in force section 68 of the Act of 1864. These two last acts were in force at the time of claimant's operations in the distillery, and for six months thereafter. The Act of July 1866, repealing section 68, provides, in section 70, "That all the provisions of former acts repealed shall be in force for collecting all taxes, duties and licenses properly assessed, or liable to be assessed, or accruing under the provisions of acts, the right to which has already accrued, or which may hereafter accrue under said acts, and for maintaining and continuing liens, fines, penalties, and forfeitures incurred under and by virtue thereof, and for carrying out and completing all proceedings which have been already commenced, or that may be commenced to enforce such fines, penalties, and forfeitures under said acts." It is therefore apparent that section 68 of the Act of 1864 remains in force as to this case, including the proviso of limitation, notwithstanding the repeal. The distillery apparatus was subject to seizure as forfeited for offences propounded in the information before the repeal affected the section in any manner; and the above provision of the repealing act reserves to the government the right to institute and prosecute these proceedings to enforce the forfeiture.

The court being satisfied that the seizure upon which this information is founded was not made within thirty days after the cause for the same had come to the knowledge of the collector and deputy collector, it is therefore ordered that the verdict be set aside and the information dismissed.